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October 21, 1996

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Federal Communications Commission
Office of Secretary

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William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RE: Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Mr. Caton:

Please find enclosed for filing the original and fifteen copies of The RBOC Payphone
Coalition's Petition for Clarification.

Please stamp and return the extra copy of the Petition to the messenger.

Sincerely,



Michael K. Kellogg

Enclosures

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Federal Communications Commission
Office of Secretary

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of

Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the)	
Telecommunications Act of 1996)	

**THE RBOC PAYPHONE COALITION'S
PETITION FOR CLARIFICATION**

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EXECUTIVE SUMMARY

Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Telephone Company, and U S WEST, Inc. -- collectively the "RBOC Payphone Coalition" or the "Coalition" -- applaud the Commission's First Report and Order in this proceeding. The Commission's regulatory scheme is as a general matter suitably tailored to meeting Congress's twin goals of "promot[ing] competition among payphone service providers" and "promot[ing] the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1).

Nonetheless, the RBOC Payphone Coalition seeks clarification of the Commission's decision in five limited areas. First, while the body of the Commission's order permits LECs to eliminate subsidies and reallocate/reclassify assets *on or before* April 15, 1997, the ordering clauses indicate that these events must take place *on* April 15, 1997. The Coalition therefore asks the Commission to make it clear that LECs are permitted to eliminate subsidies and reallocate/reclassify payphone assets *on or before* April 15, 1997. The Coalition further requests that the Commission clarify that LECs will be eligible for compensation as soon as subsidies are eliminated and assets are reallocated/reclassified.

Second, the Coalition requests clarification concerning the phones on which RBOC PSPs will be entitled to compensation. While the Commission has indicated that RBOC PSPs are entitled to compensation with respect to 0+ calls so long as compensation on those calls is not otherwise paid -- such as where an OSP entered into a long-term contract with the premises owner before the RBOC PSP was permitted to negotiate over OSP selection -- the Order contains some language which, if read a certain way, might suggest an exception in the case of inmate payphones. The Coalition asks the Commission to confirm that, with respect to compensation on RBOC PSP payphones, the Order does not distinguish between inmate and non-inmate payphones.

Third, the RBOC Payphone Coalition asks the Commission to clarify that, because LECs must provide special ANIs to identify payphones, payphone providers may not use regular business lines that are incapable of providing these special ANIs. Fourth, the Commission should confirm that the MPOE standard as applied to payphones is sufficiently flexible to allow for pragmatic solutions in individual cases.

Fifth, the Coalition asks the Commission to confirm the Coalition's understanding of the Order with respect to asset valuation and transfers of assets to separate, non-regulated affiliates. The Commission has indicated that market valuations of transferred assets must include the value of "intangibles." The Coalition asks the Commission to confirm that the Commission does not intend to depart from its prior rules, under which the only "intangibles" that must be included in such a valuation are those that appear on regulated books. Intangibles that do not appear on telephone company books, consistent with Commission precedent, should not be included in this valuation.

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The Commission's Report and Order in this proceeding represents a positive step toward implementing the new pro-competitive regulatory framework contemplated by Section 276 of the Telecommunications Act of 1996. In particular, the RBOC Payphone Coalition applauds the Commission's generally deregulatory and pro-competitive approach. As a result, the Coalition does not hereby seek reconsideration of the Commission's order -- any fundamental disagreements already have been fully aired -- but asks the Commission to clarify its decision in several respects.

I. Timing Issues [¶¶ 125, 172, 183, 369]

In accordance with Congress's express command, the Report and Order eliminates subsidies and reallocates payphone assets from regulated to non-regulated operations. To that end, the Order requires LECs to reallocate or reclassify their pay telephone equipment investments from regulated to non-regulated operations, to file revised cost allocation manuals reflecting these changes, and to file reductions in carrier common line charges "by an amount equal to the interstate allocation of payphone costs currently recovered through [those] charges." See Order ¶ 172 (assets used in provision of payphone service to be reallocated from regulated to non-regulated status); id. ¶ 369

(revised cost allocation manuals); id. ¶ 183 (LECs to file revised CCL charges). The Order also provides that, once these tasks are accomplished, LEC PSPs are eligible to receive compensation. See id. ¶ 125.

Under the text of the Order, it seems reasonably clear that the Commission intended to permit LECs to meet these requirements *on or before* April 15, 1997. Thus, the Order requires LECs to reclassify or reallocate payphone assets "*by* April 15, 1997," id. ¶ 172, to file revised federal tariffs "*by* January 15, 1997" (90 days before they become effective), id. ¶ 183, to file revised cost allocation manuals "*no later than* February 14, 1997" (60 days before they are effective), id. ¶ 369, and to have revised intrastate tariffs in place "*no later than* April 15, 1997," id. ¶ 186. The Order also explains that, once LECs have accomplished these tasks, LEC PSPs are eligible for compensation. Id. ¶ 125. In the Coalition's view, this makes good sense. By allowing LECs the flexibility to implement these changes before April 15, 1997, and making LECs eligible for compensation once they have done so, the Report and Order encourages the prompt elimination of subsidies and a rapid transition to a fully competitive payphone marketplace.

Nonetheless, the Report and Order suggests at other points that LECs cannot eliminate subsidies or reclassify/reallocate their assets *until* April 15, 1997. For example, paragraph 368 of the Commission's order states that LECs shall reclassify their payphone assets "*on* April 15, 1997." Similarly, paragraph 370 provides that the LECs' revised tariffs are "*to be effective* April 15, 1997," and does not make provision for effective dates ahead of that deadline. Despite these inconsistencies, the Coalition does not believe that the Commission intended to *preclude* LECs from implementing these changes before April 15, 1997. Such an inflexible approach would unnecessarily slow the move to fully competitive, subsidy-free payphone markets, and would create administrative havoc by forcing LECs to make difficult and costly mid-month tariff and CAM changes.

Accordingly, the Coalition urges the Commission to confirm that LECs may eliminate subsidies and reallocate assets -- and thereby become eligible for compensation -- before April 15, 1997, if they are able to do so. To this end, the Commission should confirm that:

- (1) LECs must reclassify or reallocate relevant payphone assets, as provided in paragraph 368 of the Order, *on or before* April 15, 1997.
- (2) LECs must file new CAMs no later than February 14, 1997, as provided in paragraph 369 of the Order, with such CAMs to be effective the day assets are reallocated or reclassified.
- (3) LECs must file new tariffs for the common carrier line charge as provided in paragraph 370 of the Order, at least 45 days before their assets are to be reallocated or reclassified and in no event later than January 15, 1997, to be effective the same day that the assets are reclassified or reallocated. And
- (4) LECs are eligible to receive interim compensation, as provided for in paragraph 125 of the Order, once LECs have reclassified or reallocated their assets and have eliminated their subsidies.

By confirming this, the Commission can ensure that the payphone market moves toward greater competition as rapidly as possible, while ensuring that all filings and changes occur in the appropriate sequence and at appropriate times.

II. Compensation on Inmate Payphones [¶¶ 53, 74]

It is undisputed that, even under the new regime, the market will not provide RBOC PSPs with compensation for 0+ calls made on many of their payphones, such as on RBOC payphones subject to long-term OSP contracts. Recognizing this, the Commission has decided that RBOC PSPs are entitled to compensation on 0+ calls made from their payphones so long as they do not receive any other compensation on those calls. Order ¶ 53. This is as it should be: While the statute calls for compensation for each and every completed call, RBOCs would receive no compensation for many 0+ calls absent this intervention.

At the same time, the Commission declined to set a special, higher compensation rate for inmate payphones, declaring that this might result in double compensation. *Id.* ¶ 74. This too is

unobjectionable from the Coalition's perspective. But, in the course of so declaring, the Commission may have inadvertently cast doubt on whether RBOCs PSPs are entitled to compensation for 0+ calls made on inmate payphones. Specifically, in rejecting certain PSPs' claims to a special per-call compensation rate of \$.90 on inmate payphones, the Commission stated "that mandating a per-call amount for inmate payphones, which do not allow local coin calls, could possibly lead to a double recovery of costs already included in higher-than-average operator service rates and special surcharges on end-user phone bills for calls made on these payphones" Id. ¶ 74. The Coalition reads this sentence as declining to set a *special* per-call amount for inmate payphones, not as exempting inmate payphones from the compensation scheme altogether. Indeed, a contrary reading would make little sense. There is no chance RBOC PSPs would earn a "double recovery" on 0+ calls from inmate payphones because, by definition, RBOC PSPs are entitled to compensation on 0+ calls only where they "do not otherwise receive compensation for use of their payphones in originating" 0+ calls. Id. ¶ 53.

Moreover, to deny RBOCs compensation for 0+ calls on inmate payphones would be grossly unfair. Inmate payphones are the most expensive payphones the RBOCs operate, as RBOCs must provide advanced screening and other security functions to prevent inmates from placing harassing, abusive or threatening calls to their victims, to law enforcement officers, or to potential witnesses. For many years, those expenses have been offset by subsidies. Now, however, those subsidies are being eliminated. Unless the Commission allows RBOCs to make up those losses through compensation -- as Congress intended -- RBOCs will suffer huge losses on their most costly payphones. And the interexchange carriers will reap a windfall, as the cost of operating these payphones will be eliminated from the common carrier line charge, but not made up by any other form of compensation.

Nonetheless, some may argue that the Commission could not have intended to require payment of compensation on inmate payphones, as those phones do not carry dial-around calls. With respect to inmate payphones operated by RBOC PSPs, this argument is a non-sequitur. The Commission specifically has decided that RBOC PSPs are entitled to compensation not merely on dial-around calls but *also* on 0+ calls made from their payphones, if they are not otherwise compensated therefor. It is undisputed that hundreds of thousands of 0+ calls are made each week from RBOC inmate payphones, and that RBOC PSPs do not receive any compensation for those calls. Consequently, it is indisputable that RBOC PSPs should be entitled to compensation on inmate payphones.

The fact that inmate payphones do not carry dial-around calls does point to a slightly different problem, however. While the Commission calculated the interim compensation level of \$45.85 based on an estimated 131 dial-around calls per payphone per month, compensation on RBOC inmate payphones should correspond to the number of 0+ calls per payphone per month -- a number which will be much higher. The Coalition, however, believes that the flat rate of \$45.85 applicable to all payphones, including RBOC inmate payphones, is an acceptable (if imprecise) interim measure of compensation.¹ The Coalition similarly would not object if carriers were given the alternative of paying \$0.35 per call instead -- a practicable alternative given that tracking on inmate payphones already exists.²

¹For the same reason, the Coalition does not presently anticipate any challenge to the Commission's failure to include, in its interim compensation levels, an estimate of the 0+ calls carried by RBOC payphones without compensation. So long as the interim compensation mechanism provides *some level* of recompense -- and the ultimate compensation mechanism includes full compensation -- on 0+ calls where RBOCs are not otherwise compensated, the RBOCs see no reason to upset the Commission's balance of competing concerns.

²OSPs serving inmate payphones *already* can track 0+ calls because they must do so to be able to bill for those calls. The Coalition is content to leave the choice between this approach (which would be fully compensatory) and interim flat-rate compensation (which produces less compensation than otherwise would be required) in the Commission's sound discretion.

At bottom, the Coalition would consider the right of RBOC PSPs to receive interim and per-call compensation on their inmate payphones unassailably clear if it were not for the stray remark in paragraph 74 of the Order. See page 4, supra. To ensure that this remark does not unnecessarily muddy the waters, the Coalition respectfully requests that the Commission confirm that paragraph 74 simply rejects the establishment of a special per-call rate from inmate payphones, and that it does not eliminate the compensation requirement from RBOC inmate phones entirely. In addition, because the Commission began the process of reclassifying/reallocating inmate payphone assets and eliminating subsidies for those payphones long ago,³ the Commission should confirm that RBOC inmate payphones are eligible for compensation as soon as the inmate payphone reclassification/reallocation and retariffing process is complete.

III. Provision of COCOT or Business Lines to PSPs [¶¶ 98, 113]

In order to ensure prompt and orderly tracking and payment of per-call compensation, the Commission has imposed upon LECs the obligation of ensuring that payphones are identified by 07 or 27 coding digits within the ANIs, Order ¶ 98, and of providing timely identification of payphone ANIs to carrier-payors, id. ¶ 113. The Coalition does not object to the imposition of these obligations, but seeks one clarification that is essential if LECs are properly to fulfill these new duties.

It is undisputed on this record that the only way LECs can provide payphones with appropriate coding digits within the ANIs is to require PSPs to use COCOT lines; regular business lines, which some PSPs insist upon using, do not and cannot provide the appropriate ANI digits. Moreover,

³Declaratory Ruling, Petition for Declaratory Ruling by Inmate Calling Services Providers Task Force, RM Docket No. 8181, at 13, ¶ 27 (Feb. 20, 1996).

LECs cannot identify lines as having payphones attached to them unless a COCOT line is used.⁴ Consequently, the Coalition asks the Commission to clarify that, for a payphone to be eligible for compensation, the PSPs must use a COCOT line that will provide the appropriate ANI coding. The Coalition believes that the Order clearly implies this, but that an express statement to the same effect is necessary to prevent numerous, costly disputes from arising.

IV. The Flexibility of the MPOE [¶ 151]

Consistent with the Commission's objective of ensuring non-discrimination, the Commission has determined that the demarcation point for LEC and non-LEC payphones must be the same. Order ¶ 151. To that end, the Commission has stated that the demarcation point for all new LEC payphones must be consistent with the MPOE standards for other wireline services. Ibid. The Coalition does not object to this provision, but asks the Commission to clarify that the MPOE standard is sufficiently flexible to be adapted to the unique circumstances raised by payphone placement.

Under the Commission's current rules, the network interface is generally installed within 12 inches of the cable terminal in the building occupied by the subscriber. This makes sense for most CPE, which is almost always located and used inside of the subscriber's building. But payphones often are located outside the subscriber's premises. In fact, in many instances -- for example, at gas stations, in parking lots, and at grocery stores -- the payphone is not only located outside of the subscriber's building, but a fair distance away from it as well. The application of an inflexible "12-

⁴Thus, while the Commission attempts to minimize disputes about the payment of compensation by requiring LECs to "state affirmatively on their bills to PSPs that the bills are for payphone service" whenever LECs "have knowledge that a particular phone line is used for a payphone," Order ¶ 116, the only way a LEC can determine that the line in fact is used for a payphone is through the identification of COCOT lines. Where a business line is used, LECs have no greater ability to divine that payphone CPE is attached to the line than an interexchange carrier has.

inch from premises" MPOE standard in these circumstances would impose unnecessary costs on LEC and non-LEC PSPs alike. To give one example, a service station in one of the RBOC's territories has a payphone installed at the edge of the asphalt. While this payphone is 60 feet from the station itself, it is within 5 feet of a buried terminal. If the RBOC were required to place the network interface at the service station itself rather than in a logistically correct location -- such as somewhere between the buried terminal and the payphone enclosure -- the RBOC would have to jackhammer the asphalt, run conduit between the station and the payphone, and resurface or replace the asphalt. This would cost thousands of dollars and seriously inconvenience (and perhaps harm the business of) the service station owner.⁵ In contrast, the network interface could be placed within a few feet of the payphone enclosure at little cost and with minimal inconvenience.

The RBOC Coalition believes that the current MPOE standards are sufficiently flexible to allow LECs, when confronted with such situations, to use the nearer and most cost-effective drop point. This would be consistent with the Commission's current demarcation rules, which allow LECs to select among "practicable" demarcation points (including the building or the property on which the dwelling sits) so long as the choice is reasonable and non-discriminatory. See 47 C.F.R. § 68.3 (defining "demarcation point"). Nonetheless, because the Commission has yet to apply its demarcation rules in this context, the Coalition requests that the Commission clarify its decision by specifying that the MPOE standards are sufficiently flexible to allow adaptations in the unique circumstances presented by some payphone installations.⁶

⁵Aerial wires are not a viable possibility because they offer too little clearance for the large semi-trucks that frequent this location. In addition, they are aesthetically displeasing.

⁶In CS Docket No. 95-184, individual members of the RBOC Coalition advocated additional flexibility in the telephone demarcation point rules. For example, certain RBOCs argued that the demarcation point standards should be sufficiently flexible to allow the demarcation point to be located in the optimal location based on the circumstances and that these rules should apply equally

V. Asset Valuation [¶¶ 161-171]

Finally, the Coalition asks the Commission to confirm that its order does not change existing Part 64 and Part 32 rules regarding asset valuation where assets are transferred to a separate, non-regulated affiliate. Where LECs choose to operate their payphone businesses on an integrated basis, costs are allocated in accordance with the Commission's Part 64 cost allocation rules. Order ¶ 163. And where assets are transferred to an affiliate or an operating division with no joint and common use of assets or resources, the Commission's Part 32 affiliate transaction rules require the assets to be transferred at the higher of net book value or fair market value. Id. ¶ 164.

Despite the apparent clarity of the Commission's decision -- and the absence of any change in the Commission's rules -- certain comments in the Commission's order suggest that there may be more to the Order than this. Specifically, the Commission has stated that any evaluation of "fair market value" must take into consideration the "going concern value associated with the payphone business," including "intangible assets such as location contracts." Id. ¶ 164. This statement might be read one of two ways. On the one hand, it might require the valuation of whatever intangible assets, such as location contracts, appear on LEC books. This, the Coalition believes, was the Commission's intent. By the Commission's conception, the affiliate transaction rules are "designed to protect against cross-subsidies between separate companies by capturing any appreciated value of assets transferred on the books of the carrier." Id. ¶ 167. Thus, to the extent assets on regulated books -- assets that have been the basis for regulated compensation -- have appreciated in value, those assets must be transferred at fair market value under current Part 32 rules.

to all service providers. BellSouth Comments at 3, 6 in CS Docket No. 95-184; SBC Reply Comments at 4-5 in CS Docket No. 95-184. Once the Commission rules on these issues in DS Docket No. 184, any revised demarcation point standards should also be applicable to payphones.

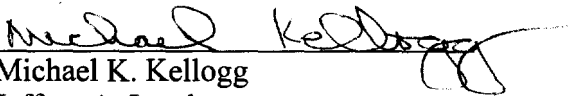
On the other hand, the decision might be read as requiring valuation of intangibles that do not appear and have never appeared as capitalized assets on a carrier's regulated books. If this were the Commission's intent, it would be inconsistent with current applications of the Commission's rules. These rules, and the Commission's decisions applying them, are clear: Assets that do not appear on regulated telephone company books -- and thus are not a source of regulated compensation -- are not to be included in the "fair market" valuation.⁷ As the Coalition has explained in its prior ex parte, in this proceeding, such an approach would be both unlawful and unfair. See Letter from Michael K. Kellogg to William F. Caton, Secretary, and Attachment thereto (Aug. 30, 1996). Simply put, under the Commission's existing rules, ratepayers have no claim, legal or equitable, to the value of so-called intangible assets that do not appear on the RBOCs books and thus have not formed part of regulated compensation.

⁷See Order on Reconsideration, Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 6283, 6315-16 n.204 (1987) (rejecting a recommendation that a non-regulated affiliate be charged for the training of an employee that had been transferred to it because employee training is "an intangible benefit" and a "sunk" cost, the value of which is of no consequences under the Commission's rules); 47 C.F.R. § 65.450(c) (specifying that, where "assets" do not appear as "costs" on RBOC books, they are *not* to be valued or assessed even when a transaction does takes place: "Gains or losses related to the disposition of property that was never included in the rate base shall not be considered for ratemaking purposes."); see also Memorandum Opinion and Order, Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Non-regulated Costs, 3 FCC Rcd 433, 437 (1988) (rejecting allocation of intangible benefits: While the Joint Cost Order allocates "all of a carrier's costs between regulated and nonregulated activities, intangible benefits, such as the Bell name, are not costs. No cost associated with the Bell name has ever appeared on Ameritech's books.").

Conclusion

The Coalition believes that the Commission's order generally sets forth a suitable framework for an even more competitive and fully subsidy-free payphone marketplace. It hereby requests only that the Commission confirm its meaning and intent in the five, limited respects identified above.

Respectfully submitted,



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